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SENATE BILL 389

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Phil A. Griego

AN ACT

RELATING TO LAND USE; REQUIRING PREPARATION OF AN IMPACT STUDY
BEFORE APPROVAL OF SUBDIVISION AND LAND USE PROVISIONS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 3-19-6 NMSA 1978 (being Laws 1965,
Chapter 300, Section 14-18-6, as amended) is amended to read:

"3-19-6. SUBDIVISION REGULATIONS. --

A. The planning authority of a municipality shall
adopt regulations governing the subdivision of land within the
planning and platting jurisdiction of the municipality. The
subdivision regulations shall be approved by the governing body
before they become effective.

B. As part of the adoption, amendment or repeal of
a subdivision regulation, the planning authority shall make a
factual finding that states the anticipated effect the

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1 regulation will have on the cost of construction and the
2 availability and pricing of housing within the areas where the
3 regulation will be in effect. The factual finding shall be a
4 written part of the enactment of the regulation and shall be
5 based on information or data in the form and from sources the
6 planning authority deems appropriate.

7 C. The subdivision regulations may provide for:

- 8 (1) the harmonious development of the
9 municipality and its environs;
- 10 (2) the coordination of streets within the
11 subdivision with existing or planned streets or other features
12 of the master plan or official map of the municipality;
- 13 (3) adequate open space for traffic,
14 recreation, drainage, light and air; and
- 15 (4) the distribution of population and traffic
16 [~~which tend~~] to create conditions favorable to the health,
17 safety, convenience, prosperity or general welfare of the
18 residents of the municipality.

19 [~~B.~~] D. Subdivision regulations may govern:

- 20 (1) the width of streets;
- 21 (2) the width, depth and arrangement of lots;
- 22 (3) land use, including natural drainage;
- 23 (4) other matters necessary to carry out the
24 purposes of the Municipal Code; and
- 25 (5) the extent and manner in which:

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- 1 (a) streets are graded and improved; and
- 2 (b) water, sewer and other utility
- 3 facilities are installed as a condition precedent to the
- 4 approval of a plat.

5 [~~E.~~] E. The subdivision regulations or the practice
6 of the planning commission may allow tentative approval of the
7 plat previous to the completion of improvements and the
8 installation of utility facilities, but such tentative approval
9 shall not be entered on a plat. In lieu of the completion of
10 improvements and the installation of utility facilities
11 previous to the final approval of a plat, the subdivision
12 regulations may provide for:

13 (1) assessment or other methods whereby the
14 municipality makes the improvements and installations at the
15 cost of the owner of property within the subdivision; or

16 (2) acceptance of a bond, in an amount and
17 with surety and conditions satisfactory to the planning
18 commission, securing to the municipality the actual
19 construction and installation of improvements and utility
20 facilities within a period of time specified by the planning
21 commission and expressed in the bond. A municipality may
22 enforce such a bond by all appropriate and legal remedies; or

23 (3) in lieu of a bond, the municipality may
24 enter into an agreement with a person seeking approval of a
25 subdivision whereby the person seeking approval shall, within

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1 two years following final approval of the plat, complete the
2 improvements and the installation of utility facilities
3 provided for in the person's application for subdivision
4 approval, except that the agreement set forth herein may
5 provide that the person seeking approval shall be permitted by
6 the municipality to sell or otherwise dispose of or improve any
7 lot within the subdivision to which improvements and utility
8 facilities have been provided by the person seeking approval at
9 any time within the two-year period. Any such agreement shall
10 be recorded with the county clerk at the time of filing ~~said~~
11 the plat.

12 ~~[D.]~~ F. The governing body or planning commission
13 of the municipality shall hold a public hearing on the adoption
14 of a subdivision regulation or an amendment to it. Notice of
15 the time and place of the public hearing shall be published
16 once at least fifteen days prior to the date of the public
17 hearing.

18 ~~[E.]~~ G. If the requirement or restriction does not
19 violate the zoning ordinance, the governing body or planning
20 commission of the municipality may agree with a person seeking
21 approval of a subdivision upon the use, height, area or bulk
22 requirement or restriction governing buildings and premises
23 within the subdivision. The requirement or restriction shall:

24 (1) accompany the plat before it is approved
25 and recorded;

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- 1 (2) have the force of law;
- 2 (3) be enforced; and
- 3 (4) be subject to amendment or repeal as the
- 4 provisions of the zoning ordinance and map are enforced,
- 5 amended or repealed. "

6 Section 2. Section 3-19-9 NMSA 1978 (being Laws 1965,
7 Chapter 300, Section 14-18-9, as amended) is amended to read:

8 "3-19-9. MASTER PLAN--PURPOSES. --

9 A. The planning commission shall prepare and adopt
10 a master plan for the physical development of the municipality
11 and the area within the planning and platting jurisdiction of
12 the municipality which in the planning commission's judgment
13 bears a relationship to the planning of the municipality. The
14 planning commission may amend, extend or add to the plan or
15 carry any part or subject matter into greater detail. The
16 planning commission, as part of the adoption, amendment or
17 repeal of a master plan, shall make a factual finding that
18 states the anticipated effect the master plan will have on the
19 cost of construction and the availability and pricing of
20 housing within the areas where the master plan will be in
21 effect. The factual finding shall be a written part of the
22 enactment of the master plan and shall be based on information
23 or data in the form and from sources the planning commission
24 deems appropriate. In preparing the master plan, the planning
25 commission shall make careful and comprehensive surveys and

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1 studies of existing conditions and probable future growth of
2 the municipality and its environs. The plan shall be made with
3 the general purpose of guiding and accomplishing a coordinated,
4 adjusted and harmonious development of the municipality which
5 will, in accordance with existing and future needs, best
6 promote health, safety, morals, order, convenience, prosperity
7 or the general welfare as well as efficiency and economy in the
8 process of development.

9 B. Among other things, the master plan with
10 accompanying maps, plats and charts, descriptive and
11 explanatory matter and recommendations of the planning
12 commission for the physical development of the municipality and
13 for its planning jurisdiction may include:

14 (1) the general location, character and extent
15 of streets, bridges, viaducts and parkways, parks and
16 playgrounds, floodways, waterways and waterfront development,
17 airports and other ways, grounds, places and spaces;

18 (2) the general location of public schools,
19 public buildings and other public property;

20 (3) the general location and extent of public
21 utilities and terminals, whether publicly or privately owned;

22 (4) the general location, character, layout
23 and extent of community centers and neighborhood units and the
24 replanning of blighted districts and slum areas; and

25 (5) the acceptance, widening, removal,

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1 extension, relocation, narrowing, vacation, abandonment or
2 change of use of any of the foregoing public ways, grounds,
3 places, spaces, buildings, properties, utilities or terminals.

4 C. Copies of the master plan shall be available at
5 the office of the municipal clerk and may be purchased at a
6 reasonable price. "

7 Section 3. Section 3-21-1 NMSA 1978 (being Laws 1965,
8 Chapter 300, Section 14-20-1, as amended by Laws 1995, Chapter
9 170, Section 4 and also by Laws 1995, Chapter 211, Section 3)
10 is amended to read:

11 "3-21-1. ZONING--AUTHORITY OF COUNTY OR MUNICIPALITY.--

12 A. For the purpose of promoting health, safety,
13 morals or the general welfare, a county or municipality is a
14 zoning authority and may regulate and restrict within its
15 jurisdiction the:

- 16 (1) height, number of stories and size of
17 buildings and other structures;
18 (2) percentage of a lot that may be occupied;
19 (3) size of yards, courts and other open
20 space;
21 (4) density of population; and
22 (5) location and use of buildings, structures
23 and land for trade, industry, residence or other purposes.

24 B. The county or municipal zoning authority may:

- 25 (1) divide the territory under its

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1 jurisdiction into districts of such number, shape, area and
2 form as is necessary to carry out the purposes of Sections
3 3-21-1 through 3-21-14 NMSA 1978; and

4 (2) regulate or restrict the erection,
5 construction, reconstruction, alteration, repair or use of
6 buildings, structures or land in each district. All such
7 regulations shall be uniform for each class or kind of
8 buildings within each district, but regulation in one district
9 may differ from regulation in another district.

10 C. As part of the adoption, amendment or repeal of
11 a zoning regulation, the zoning authority for a county and
12 municipality shall make a factual finding that states the
13 anticipated effect the zoning regulation will have on the cost
14 of construction and the availability and pricing of housing
15 within the areas where the regulation will be in effect. The
16 factual finding shall be a written part of the enactment of the
17 zoning regulation and shall be based on information or data in
18 the form and from sources the zoning authority deems
19 appropriate.

20 [~~C.~~] D. All state-licensed or state-operated
21 community residences for the mentally ill or developmentally
22 disabled serving ten or fewer persons may be considered a
23 residential use of property for purposes of zoning and may be
24 permitted use in all districts in which residential uses are
25 permitted generally, including particularly residential zones

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1 for single-family dwellings.

2 [D-] E. A board of county commissioners of the
3 county in which the greatest portion of the territory of the
4 petitioning village, community, neighborhood or district lies
5 may declare by ordinance that a village, community,
6 neighborhood or district is a "traditional historic community"
7 upon petition by twenty-five percent or more of the registered
8 qualified electors of the territory within the village,
9 community, neighborhood or district requesting the designation.
10 The number of registered qualified electors shall be based on
11 county records as of the date of the last general election.

12 [E-] F. Any village, community, neighborhood or
13 district that is declared a traditional historic village shall
14 be excluded from the extraterritorial zone and extraterritorial
15 zoning authority of any municipality whose extraterritorial
16 zoning authority extends to include all or a portion of the
17 traditional historic community and shall be subject to the
18 zoning jurisdiction of the county in which the greatest portion
19 of the traditional historic community lies. "

20 Section 4. Section 4-57-2 NMSA 1978 (being Laws 1967,
21 Chapter 150, Section 2) is amended to read:

22 "4-57-2. POWERS AND DUTIES OF COMMISSION. --

23 A. A county planning commission shall have such
24 powers as are necessary and proper to carry out and promote
25 county planning. [Such] The planning shall be made with the

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1 general purpose of guiding and accomplishing a coordinated,
2 adjusted and harmonious development of the county which will,
3 in accordance with existing and future needs, best promote
4 health, safety, morals, order, convenience, prosperity or the
5 general welfare, as well as efficiency and economy in the
6 process of development. A county plan and any changes to a
7 plan shall expressly consider and adopt a factual finding
8 concerning the effect of the plan on the estimated increase or
9 decrease in housing construction costs and the availability and
10 pricing of housing within the county.

11 B. A county planning commission may:

12 (1) make reports and recommendations for the
13 planning and development of the county to any other individual,
14 partnership, firm, public or private corporation, association,
15 trust, estate, political subdivision or agency of the state or
16 any other legal entity or their legal representatives, agents
17 or assigns; and

18 (2) recommend to the administrative and
19 governing officials of the county programs for public
20 improvements and their financing. "